APPEAL NO. 032368
FILED OCTOBER 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 2, 003. The hearing officer determined that (1) the claimed injury occurred while the appellant (claimant) was in a state of intoxication, as defined in Section 401.013, from the introduction of a controlled substance, thereby relieving the respondent (carrier) from liability for compensation; (2) although injured in the course and scope of employment, the claimant did not sustain a compensable injury on _____; (3) the claimed injury did not extend to include a cervical sprain/strain, cervical spine MRI findings dated November 7, 2002, right carpal tunnel syndrome, right cubital tunnel syndrome, right shoulder tendonitis, and right shoulder MRI findings dated November 7, 2002; and (4) because the claimant did not sustain a compensable injury, he did not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in admitting the carrier's exhibits. The carrier urges affirmance.

DECISION

Affirmed.

The claimant asserts that the hearing officer erred in admitting Carrier's Exhibit Nos. 1 through 9. The claimant objected to the admission of these exhibits at the hearing, asserting that they were not timely exchanged. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) provides that the parties shall exchange documentary evidence no later than 15 days after the benefit review conference (BRC). The carrier produced an exchange coversheet showing that its exhibits were sent to the claimant's correct address by certified mail, 15 days after the BRC. The claimant denies that he received the exchange and asserts, on appeal, that the certified mail number provided by the carrier is invalid. The carrier represented that the exchange package was not returned by the postal service. Under the circumstances presented here, we cannot conclude that the hearing officer abused her discretion in admitting the documents. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in making the complained-of determinations. The intoxication determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's intoxication determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the intoxication determination, we likewise

affirm the hearing officer's compensability, extent-of-injury, and disability determinations.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge